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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN,
a labor organization, *et al.*,

Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF OF RESPONDENT JACKSONVILLE TERMINAL COMPANY IN OPPOSITION

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OPINION BELOW

The District Court of Appeal of Florida, First District, did not render an opinion. Its order denying the "Suggestion for Writ of Prohibition" is set forth in Appendix A to the Petition for Certiorari. (Pet. App. 1a)

STATUTES INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947 ("LMRA"), 29 U.S.C. § 141 *et seq.*, the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, and the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*, are reprinted in the Appendix to the Petition. (Pet. App. 2a-12a) The pertinent provisions of the Florida Transportation Act, Fla. Stat. §§ 351.12, 351.14-.17, and 351.19, and the Florida Restraint of Trade Law, Fla. Stat. §§ 542.01-.12, are set forth in Appendix A to this Brief in Opposition.

QUESTIONS PRESENTED

Respondent[1] contends that the federal questions sought to be raised by Petitioners are not properly before this Court, inasmuch as there is no showing that the Florida District Court of Appeal, in denying Petitioners' request for extraordinary relief, passed on the merits of those questions. In any event, Respondent would state the substantive questions which Petitioners attempt to tender to this Court as follows:

(1) Whether the jurisdiction of a state court to adjudicate an action brought exclusively under state law is preempted by the jurisdiction of the National Labor Relations Board ("NLRB") under the LMRA, when the controversy which led to the state court action is entirely within the railroad industry and the labor relations of all participants with each other are subject to the Railway Labor Act and not to the LMRA?

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[1] While the Honorable Roger J. Waybright, Circuit Judge in the Fourth Judicial Circuit, Duval County, Florida, is also a Respondent, the term "Respondent" herein will generally be used to refer simply to Jacksonville Terminal Company.

(2) Whether the Norris-LaGuardia Act deprives a state court of jurisdiction to grant injunctive relief in an action brought exclusively under state law?

STATEMENT OF THE CASE

On May 4, 1966, Petitioners, Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen, three railway operating brotherhoods[2] who had been embroiled in a controversy with the Florida East Coast Railroad ("FEC"), threw a picket line around the property of the Respondent Jacksonville Terminal Company ("Terminal Company") in Jacksonville, Florida, a terminal facility jointly used by the Atlantic Coast Line Railroad Company ("Coast Line"), Seaboard Air Line Railroad Company ("Seaboard") and other rail carriers, including the FEC. The purpose of this picketing has been repeatedly admitted to be to induce Terminal Company, Coast Line and Seaboard to cease terminal operations for, and connecting and interchange operations with, FEC.[3] An immediate effect of it was to threaten a complete standstill of the movement of all mail, freight, express and passengers through or within the terminal area, whether these movements involved interchanges with the FEC or not. Another immediate effect was to threaten an immediate and total halt to the operations of Terminal Company, not simply those conducted for the FEC, but those conducted for the other

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[2] In addition, three individuals—officers and members of the Petitioner Brotherhoods—are also Petitioners in this matter.

[3] See, *e.g.*, Brief in Opposition to Petition for Certiorari in No. 220, O.T. 1966, p. 6; Memorandum of Respondents in Opposition to Petitioners' Application for a Stay in No. 220, pp. 18-21. See note 5, *infra*.

carriers using the Jacksonville terminal[4] and the services to shippers served from the terminal.

Respondent Terminal Company, together with Coast Line and Seaboard, commenced a suit later the same day in the United States District Court for the Middle District of Florida for a limited injunction against the picketing at the property of the Terminal Company.[5] After a contested hearing, the District Court that day entered a limited temporary restraining order restricting the picketing to the gate at the Terminal which had been previously set aside for FEC employees. On May 10, 1966, following a full evidentiary hearing, the District Court entered a similarly limited preliminary injunction.

Petitioners appealed from the order granting that injunction to the United States Court of Appeals for the Fifth Circuit. After argument, the Court of Appeals for the Fifth Circuit announced orally on the afternoon of May 23, 1966, that an order would be entered the following day vacating the limited preliminary injunction entered by the District Court on May 10, 1966.[6]

This action by the Court of Appeals would have permitted immediate resumption of the picketing at the Terminal Company, with consequent disruption of its opera-

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[4] The other carriers are Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, and the Southern Railway System.

[5] This suit is now pending before this Court in No. 220, O.T. 1966, certiorari having been granted on June 20, 1966. For a more detailed description of the background of the events which gave rise to the present case, see pp. 6-11 of the Petition for Certiorari in No. 220.

[6] Such an order was entered by the Court of Appeals on the following day, May 24, 1966, and it is this order which the Court has now undertaken to review in No. 220.

tions. In view of this, the Terminal Company commenced an action on that day in the Duval County, Florida, Circuit Court against the present Petitioners. The Complaint in this suit, as originally filed and as amended on May 27, 1966, is based exclusively on Florida law. (Pet. App. 20a, ¶3; 22a-23a, ¶12; 41a, ¶3; 43a-44a, ¶12)

The Complaint, as amended, alleges that the picketing of the Terminal Company is unlawful under Florida law on a variety of grounds: it seeks to effect a restraint of trade in violation of Florida law; threatens to prevent Respondent from providing transportation service as required by state law; unlawfully restrains Respondent from carrying on its business operations; constitutes a secondary boycott; interferes with Respondent's business and contractual relations; will result in a taking of Respondent's property; and constitutes an illegal interference with the rights of Respondent's employees to earn a living. (Pet. App. 43a-44a, ¶12)

The Answer raises various issues of fact, and contains eight affirmative defenses, including claims that the dispute is governed by federal law and that under federal law the state court has no jurisdiction to entertain the Complaint. (Pet. App. 36a-38a)

Following a contested hearing, the Circuit Court concluded that the acts complained of were in violation of Florida law.[7] On May 30, 1966, the Circuit Court entered a limited temporary injunction restraining Petitioners from

[7] The Circuit Court found that the picketing, if resumed, would cause a "virtual cessation of activities not only of the Terminal Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida," and that it would "adversely affect an entire economic area, from Duval

picketing the Terminal Company's properties except at the entrance designated for use of the FEC employees, from inducing the employees of the Terminal Company to cease working, and from interfering with the Terminal Company's operations. (Pet. App. 48a)

Although they could have appealed this order,[8] Petitioners chose not to. Instead, on June 3, 1966, Petitioners filed a "Suggestion for Writ of Prohibition" in the District Court of Appeal of Florida, First District, asking that an extraordinary writ issue "prohibiting" the Circuit Judge "from exercising jurisdiction." (Pet. App. 13a) On June 8, 1966, following oral argument, the District Court of Appeal entered an order denying the "Suggestion" for the reason that "said suggestion fails to make out a prima facie case upon which Rule Nisi could issue." (Pet. App. 1a)

County to Key West, Florida, and would cause economic strangulation of the entire state." (Pet. App. 49a-50a)

The Court concluded that:

> "The past and threatened picketing did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. § 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and seeks to coerce plaintiff into agreeing to embargo the FEC in violation of the Restraint of Trade Laws of this State. Chapter 542, Florida Statutes. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees." (Pet. App. 50a)

[8] See pp. 7-8, *infra*.

It is this order of the District Court of Appeal[9] which the Petition for Certiorari seeks to bring before this Court for review.

ARGUMENT

1. *There is no showing that the Florida District Court of Appeal decided the Federal questions which the Petitioners seek to raise in this Court, or that any decision on those questions was necessary to its decision.*—The brief order of the District Court of Appeal denying Petitioners' application for an extraordinary writ does not indicate that the Federal questions sought to be raised by Petitioners in this Court were in fact passed upon by the District Court of Appeal. Nor can it be said that a decision on these questions was necessarily implicit in that court's action, or that there could be no adequate state-law basis for its failure to decide those questions. Accordingly, under principles too familiar to require discussion, there is no jurisdiction at this point to consider those questions on certiorari.

In the District Court of Appeal, the first ground of opposition by Respondent to the application for prohibition was based entirely on the unavailability of that remedy to Petitioners as a matter of state law. Under Florida law Petitioners had an adequate, speedy remedy available in the State courts—appeal from the Circuit Court's grant of the temporary injunction—to correct any error or defect in the Circuit Court's proceedings, including lack of jurisdiction of the subject matter on the basis of the federal-law contentions now sought to be raised by Petitioners.

[9] Further proceedings have gone forward in the Circuit Court since the District Court of Appeal's order. The Circuit Court has made rulings on discovery and has set a date for the final hearing on a permanent injunction—July 29, 1966.

Rule 4.2 of the Florida Appellate Rules provides for appeals from interlocutory orders and decrees, and contemplates speedy and complete review of these orders and decrees.[10]

It is settled in Florida that under these circumstances, as a matter of state law, the extraordinary writ of prohibition is not available: ". . . [W]here an appeal lies from an interlocutory order, a writ of prohibition is only authorized where the remedy by appeal from such order is not plain, speedy, and adequate." *State ex rel. Meredith*

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[10] Rule 4.2 provides in relevant part:

"a. *Application.* . . . appeals to the appropriate court from interlocutory orders or decrees in equity . . . may be prosecuted in accordance with this rule;

"b. *Time for Filing.* The notice of appeal, which shall designate the appeal as an interlocutory appeal, and assignments of error shall be filed simultaneously within 60 days from the rendition of the order, judgment or decree sought to be reviewed.

• • •

"d. *Record-on-Appeal.* No record on appeal shall be required or permitted other than certified copies of the appeal papers and the judgment or order appealed from. Such certified copies shall be served and filed within 15 days from the date of the filing of the notice of appeal. The appendices shall contain full copies of all pleadings and other parts of the record needed to determine the appeal.

"e. *Briefs.* . . . appellant's main brief shall be served within 15 days after the notice of appeal is filed, appellee's brief shall be served within 10 days after he is served with appellant's brief, and appellant's reply brief shall be served within five days after he is served with appellee's brief. All briefs shall be promptly filed after service.

"f. *Hearing and Disposition.* When oral arguments are requested, interlocutory appeals shall be set by the Court for argument at the earliest practicable date."

Under Rules 3.6 and 3.12, the appellant may seek, and the Court may grant, an even more accelerated schedule for briefing and argument.

v. *Board of Trustees,* 102 Fla. 219, 223, 135 So. 781, 783 (1931). This is an application of the general principle followed by the Florida courts that a writ of prohibition will issue to prevent a lower court from acting without jurisdiction or in excess of its jurisdiction only if the party seeking the writ has no other adequate remedy. *Crill* v. *State Road Department,* 96 Fla. 110, 115-16, 117 So. 795, 797-98 (1928); *Sherlock* v. *City of Jacksonville,* 17 Fla. 93 (1879); *State ex rel. Paulska* v. *White,* 162 So. 2d 697, 699 (Fla. App. 1964); *Curtis* v. *Albritton,* 101 Fla. 853, 132 So. 677 (1931); *State ex rel. Schwarz* v. *Heffernan,* 142 Fla. 137, 140, 194 So. 313, 314 (1940).

Indeed, the Respondent's first argument in opposition to the application for prohibition was precisely on the ground that: "Petitioners Have Not Made a Prima Facie Case for Issuance of a Rule Nisi Since Petitioners Have an Adequate Remedy by Interlocutory Appeal and Because Prohibition Cannot Be Used to Review the Correctness of Decisions of the Lower Court." Brief in Opposition to Suggestion for Writ of Prohibition, p. 1. Respondent also brought to the attention of the District Court of Appeal the accepted principle of Florida law that the issuance of a rule nisi and the granting of the extraordinary writ rest in the sound discretion of the court, to be exercised "only in cases of great urgency, special emergency or absolute necessity." *State ex rel. Urga* v. *Grayson,* 80 So.2d 679 (Fla. 1955); see *Sherlock* v. *City of Jacksonville, supra.*

There is no showing that the "Suggestion for Writ of Prohibition" was not denied for these obvious and clearly adequate state-law reasons—essentially, for the Petitioners' neglect of their ordinary remedy of interlocutory appeal—rather than on the basis of a rejection of the Fed-

eral claims urged by Petitioners.[11] But it is the burden of Petitioners, particularly in the presence of such an obvious and clearly adequate state ground, to demonstrate that the state grounds do not account for the decision below. See *Durley* v. *Mayo*, 351 U.S. 277, 281 (1956); *Stembridge* v. *Georgia*, 343 U.S. 541, 547-48 (1952); *Ellis* v. *Dixon*, 349 U.S. 458, 459 (1955); *Lynch* v. *New York*, 293 U.S. 52, 54-55 (1934); *Woods* v. *Nierstheimer*, 328 U.S. 211 (1946); *Phyle* v. *Duffy*, 334 U.S. 431 (1948). In the absence of such a showing it cannot be said that the Federal questions are properly before this court on certiorari.

Petitioners' principal reliance in support of this Court's jurisdiction is apparently on *Local No. 438* v. *Curry*, 371 U.S. 542 (1963). (Pet. 7) But that case has nothing to do with the present one. There it was held that a decision of a state supreme court which ordered the issuance of a preliminary injunction, after passing on and rejecting a federal claim of preemption of state court jurisdiction by the LMRA, amounted to "final judgment," a prerequisite under Section 1257(3) of the Judicial Code to this Court's review of a state court's action. We need not at this point take issue with the contention that the District Court of Appeal's judgment is technically "final," since this Court's

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[11] The Petitioners suggest (Pet. 6 & n. 7) that because the District Court of Appeal "denied" rather than "dismissed" the suggestion for a writ of prohibition, its action was based on a judgment as to the merits of the underlying federal questions tendered to it. The Florida cases, including the one cited by Petitioners, do not articulate any principle that would invest the District Court of Appeal's choice of words with the verbal magic contended for by Petitioners. Indeed, the district courts of appeal in Florida in other cases than the present one have used the word "denied," rather than "dismissed" in rejecting, on jurisdictional, procedural, or other grounds not related to the underlying substantive issues, suggestions for extraordinary writs. See *State ex rel. Paulska* v. *White*, 162 So.2d 697 (Fla. App. 1964); *State ex rel. Marshall* v. *Turner*, 175 So.2d 809 (Fla. App. 1965).

decisions indicate that denials of applications for extraordinary writs from state appellate courts in proceedings which are technically separate from a main action pending in a lower state court are jurisdictionally "final judgments" within the meaning of Section 1257. See *New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63 (1928); *Pacific Coast Dairy* v. *Department of Agriculture,* 318 U.S. 285 (1943); Stern & Gressman, *Supreme Court Practice* (3d ed. 1962), p. 84. The point is simply that the extraordinary writ has not been shown to have been denied here other than on the grounds of its inappropriateness as a remedy under state law.

To be sure, even if technically "final," the nature of the order sought to be reviewed is essentially interlocutory, and we urge this as a discretionary reason against the granting of certiorari. *Cf. Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.,* 240 U.S. 251, 258 (1916); Boskey, *Finality of State Court Judgments Under the Federal Judicial Code,* 43 Colum. L. Rev. 1002, 1022 (1943). Unlike the situation in the *Curry* case, the jurisdiction of the state courts has not been finally passed on by any state appellate tribunal. Petitioners may renew their objections to state court jurisdiction, and attempt a further evidentiary development of those objections, at the hearing on the permanent injunction, which is presently scheduled in the Circuit Court for July 29, 1966; and may thereafter obtain a review on appeal by the appellate courts of Florida if the decision goes against them. Indeed, that appellate review may include discretionary review by the State Supreme Court—a review which Petitioners claim was not available with respect to the application for prohibition.[12]

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[12] Indeed, it is far from clear that discretionary review of the denial of the suggestion for a writ of prohibition here could *not* have been obtained from the Supreme Court of Florida—despite

In the absence of any final determination by the Florida courts of their jurisdiction over this suit, this case is clearly not ripe for review by this Court at this stage of the proceeding—even apart from the jurisdictional defect of the absence of any demonstration that the District Court of Appeal passed on or had to pass on the Federal questions now being tendered.—In sum, even if the substance of those questions were much stronger than it is, the jurisdictional defect would preclude the granting of certiorari; and in any event the interlocutory nature of the order sought to be reviewed would, we submit, counsel against such a grant.

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the Petitioners' assertion, without citation of case authority, to the contrary. (Pet. 5 n. 6) Thus there appears to be a serious question whether Petitioners have demonstrated that the order which they seek to have reviewed is indeed a "judgment or decree rendered by the highest court of a state in which a decision could be had." 28 U.S.C. § 1257.

To be sure, Article V, Section 4(2), para. 3, of the Florida Constitution provides that: "The supreme court may issue . . . writs of prohibition . . . to the trial courts when questions are involved upon which a direct appeal to the supreme court is allowed as a matter of right"; but it would appear the more logical reading of this provision, together with the broad provisions for discretionary review of the decisions of the district courts of appeal on certiorari, that all that the quoted language is meant to embrace is the category of cases in which an application for prohibition may be made *directly to the supreme court in the first instance*, and that it does not prohibit supreme court review of a prohibition application granted or denied by a district court of appeal. There would be an obvious reason why the category of cases in which an original supreme court prohibition can issue is defined in the Constitution as identical to those in which there is a direct appeal to that court from the trial courts—namely, that it was desired to establish a symmetry between those cases in which a direct appeal could be taken to the supreme court and those in which (the conditions upon the grant of the extraordinary writ being fulfilled) a writ of prohibition might be applied for in the first instance to the supreme court. By a parity of reasoning, since the supreme court may in its discretion review on certiorari appeal cases which have been heard by the district courts of appeal, it has under similar circumstances, jurisdiction to entertain certiorari applications from the grant or

2. *The Federal questions tendered to this Court at this point are in any event without substance.*—(a) *Alleged Preemption by NLRB Jurisdiction*— The first contention of Petitioners is that review is necessary to protect the "exclusive primary jurisdiction" of the NLRB over the controversy which gave rise to Respondent's suit in the Florida Circuit Court. But it is perfectly plain from the language of the LMRA, the interrelationship of that Act with the Railway Labor Act, and the decided cases in this and other courts, that there is no NLRB jurisdiction over this controversy to protect. This controversy is not even "arguably subject" to NLRB jurisdiction. *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 245 (1959).

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denial of a writ of prohibition. The Florida Supreme Court has never denied its certiorari jurisdiction over orders of the district courts of appeal granting or denying prohibition; indeed, where it has dismissed an appeal as of right from such an order, it has done so on the basis that the ordinary conditions for appeal as of right from the district courts of appeal were not met, not on the ground that because prohibition was involved, there was any absolute bar against its review of the district court of appeal's order. See *State ex rel. Emmanuel* v. *Cooper*, 152 So.2d 471 (1963).

The language of the Florida Constitution's certiorari clause is broad:

> "The supreme court may review by certiorari *any decision of a district court of appeal* that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that it is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law . . . ." (Art. V, § 4(2), para. 2) (emphasis supplied)

Here the petitioners made no attempt whatsoever to request the district court of appeal to certify the questions presented to it by the suggestion for a writ of prohibition as "of great public interest," or to obtain review in the state supreme court. We submit that it was obligatory upon Petitioners to have invoked the exercise of the discretion of the district court of appeal in so certifying the question, or of the state supreme court in reviewing the case on certiorari, before coming to this Court. See *Stratton* v. *Stratton*, 239 U.S. 55 (1915); *Matthews* v. *Huwe*, 269 U.S. 262, 265-66 (1925).

The definitional section of the LMRA is plain on its face in exempting controversies entirely within the railroad industry, as this one is, from the coverage of the Act and the jurisdiction of the NLRB. Section 2 of the Act provides in pertinent part:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act, as amended from time to time . . . .
>
> "(3) The term 'employee' shall include any employee . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act, as amended from time to time . . . ." 29 U.S.C. §§ 152(2), (3).

"Labor organizations" are subject to the Act only if "employees" within the foregoing definitions participate in them:

> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

There is no dispute that all the participants in the controversy which led to the Circuit Court proceeding—the FEC, its employees, the Coast Line, the Seaboard, the Terminal Company, their employees, and the Petitioners—are persons subject to the Railway Labor Act. There is likewise no doubt that their labor relations with each other

are excluded from the coverage of the LMRA. As this Court has often made clear, the Railway Labor Act is a self-contained system for the settlement of disputes *within the railroad industry*. See, *e.g.*, *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711 (1945); *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30 (1957).

It makes a mockery of this whole elaborate scheme for dealing with labor controversies in the railroad industry to suggest that Congress also superimposed on it the regulatory regime of the LMRA and the potentially conflicting jurisdiction of the NLRB. The authors of the LMRA made it plain that they had no such purpose:

> "The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents [in the LMRA] it was not intended to include such employees." S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 19.

As this Court has pointedly said:

> "The Act, in its definition of an 'employer', expressly excludes anyone subject to the Railway Labor Act. 61 Stat. 137, 29 U.S.C. § 152(2). It is of course true that employer-employee relationships of railroads such as respondent are governed by the Railway Labor Act, which was passed before either the National Labor Relations Act or the Labor Management Relations Act. Neither of the latter Acts was intended to tread upon the ground covered by the Railway Labor Act. It is clear that neither railroads nor their employees may carry their grievances with one another to the N. L. R. B. for resolution. . . ."

> "We think it clear that Congress, in excluding, 'any person subject to the Railway Labor Act' from the statutory definition of 'employer', carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York, N. H. & H. R. Co.*, 350 U. S. 155, 159-60 (1956).[13]

The authorities relied on by Petitioners as upholding NLRB jurisdiction at the instance of, or over, certain persons subject to the Railway Labor Act are all inapposite.

In each such case, at least one of the other participants in the controversy was a person clearly subject to the LMRA and the controversy did not involve relationships entirely within the railway industry.[14]

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[13] See also *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F.2d 642, 646-47 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 869 (1951); *NLRB* v. *Interior Enterprises*, 298 F.2d 147 (9th Cir. 1961); *Bruno* v. *Northeast Airlines*, 229 F. Supp. 716, 717 (D. Mass. 1964).

[14] Thus, in *Local Union No. 25* v. *New York, N.H. & H.R. Co., supra*, this Court merely held that a railroad could invoke the processes of the NLRB against conduct of the Teamsters Union which was engaged in a dispute with certain motor carriers. Neither the Teamsters nor the motor carriers were persons subject to the Railway Labor Act with respect to their labor relations with each other, and the railroad had no labor dispute with any railway employees.

Similarly, in *International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966), the Court of Appeals affirmed the assertion of NLRB jurisdiction over unions subject to the Railway Labor Act solely on the ground that they were "agents" of and "joint venturers" with other unions which were subject to the LMRA. 350 F.2d, at 792. The unions were engaged in unlawful secondary picketing of persons not subject to the Railway Labor Act, and Section 8(b) of the LMRA imposes liability for unfair labor practices by "a labor organization *or its agents.*" 29 U.S.C. § 158(b) (emphasis supplied). See 150 N.L.R.B. No. 37, 57 L.R.R.M. 1526 (1964). There is no claim here of any "agency" or "joint venture" with a party subject to the LMRA.

In the present case, nobody asserts that either the Petitioners, the Respondent, the Coast Line, the Seaboard, the FEC, or any of their employees related to the present matter are subject to the LMRA or are acting as agent for, or joint venturer with, any persons subject to that Act. *Cf. International Brotherhood of Electrical Workers* v. *NLRB,* 350 F.2d 791 (D.C. Cir. 1965), *cert. denied,* 383 U.S. 943 (1966). Indeed, in their petition for certiorari, Petitioners "candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A." (Pet. 16, emphasis original) It is somewhat difficult to say that this matter is "arguably" subject to the jurisdiction of the NLRB when no one is willing to step forward and make any such argument.[15]

It bears reemphasis that every member of the cast of characters in the events forming the basis of Respondent's suit in the Circuit Court is a person subject to the Railway Labor Act, and this case exclusively concerns relationships within the railway industry.[16] No case has held the LMRA

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[15] "There are two major Federal Labor statutes that deal with the matter of labor disputes affecting interstate commerce, and they are not at all similar. They are very dissimilar. They have different approaches to the problem.

"One of them, of course, is the Taft-Hartley Act.
"The other one is the Railway Labor Act.
"Now, this is a pure Railway Labor Act dispute."

Argument on behalf of the present Petitioners, in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen,* U.S.D.C., M.D. Fla., May 4, 1966, Tr. 81 (now before this Court as No. 220, O.T. 1966).

[16] The NLRB case relied on by Petitioners as involving an assertion of NLRB jurisdiction over two of them, *Brotherhood of Locomotive Firemen & Enginemen,* 130 N.L.R.B. No. 94, 47 L.R.R.M. 1461 (1961), *modified,* 302 F.2d 198 (9th Cir. 1962), is clearly

applicable in such a situation, and for good and obvious reasons. If this case is one "arguably" within the jurisdiction of the NLRB, it would be hard to imagine a railway labor case which was not; and the exception which Congress carefully preserved in LMRA would become a nullity.[17] Petitioners' argument on this point is without substance and even if properly before this Court would furnish no basis for the grant of certiorari.

(b) *Alleged Conflict with Norris-LaGuardia*—The contention of Petitioners that the state courts lack power to issue an injunction in a case brought under Florida state law because of the Norris-LaGuardia Act is of even less substance. That Act is plain on its face in limiting the jurisdiction *only of the federal courts* to grant injunctive

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inapposite because it involved neither persons nor a controversy entirely within the railway industry. The controversy there was between non-railway employees and their employer; the two Petitioners happened to be the collective bargaining representative for these non-railway employees.

Marine Engineers Beneficial Ass'n v. *Interlake Steamship Co.*, 370 U.S. 173 (1962), held merely that the NLRB had exclusive primary jurisdiction to determine whether the Marine Engineers was a "labor organization" under Section 8(b) of the LMRA, or was excluded from the coverage of the Act because it represented only "supervisors." The NLRB had previously laid down principles for determining a "labor organization" which made it clear that it would assert jurisdiction over the Marine Engineers. No such issue is presented in the instant case, nor do Petitioners contend they are a "labor organization" under the LMRA. Moreover, *Marine Engineers* did not involve the specific exclusion of controversies within the railway industry from the coverage of the LMRA.

[17] This is not to say that the broad national policies which Congress has laid down in the LMRA may be ignored in construing the Railway Labor Act or in any judicial consideration of railway labor questions. But obviously the specific administrative regulatory regime of the NLRB under the LMRA is completely foreign to a matter like the present one.

relief. The declaration of public policy in Section 2 of the Act states:

> "... the following definitions of and limitations *upon the jurisdiction and authority of the courts of the United States* are enacted." 29 U.S.C. § 102. (emphasis supplied)

The Act repeatedly states:

> "No court of the United States shall have jurisdiction [to grant injunctive relief in the enumerated situations]." §§ 1, 4, 5, 7, 29 U.S.C. §§ 101, 104, 105, 107.

The definitional section spells out the scope of the Act in terms which allow no room for argument:

> "The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." § 13(d), 29 U.S.C. § 113(d).

This language is so clear and unequivocal that no court, state or federal, has held that the Norris-LaGuardia Act limits the historic equity jurisdiction of the state courts. As the Court of Appeals for the Third Circuit has said:

> "There is nothing in the language of the Act or its legislative history which can possibly, within 'the range of judicial inventiveness,' or the process of judicial *fashioning,* be construed as extending to the jurisdiction of state courts." *American Dredging Co.* v. *Local 25,* 338 F.2d 837, 852 (3d Cir. 1962), *cert. denied,* 380 U.S. 935 (1965). (emphasis original)

In Justice Traynor's words:

> "The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts . . . . It did not limit the remedial power of the state courts . . . ." *McCarroll* v. *Los Angeles Dist. Council,* 49 Cal. 2d 45, 63, 315 P.2d 322, 332 (1957), *cert. denied,* 355 U.S. 932 (1958).[18]

In their classic work on the labor injunction, then-Professor Frankfurter and Mr. Greene wrote of the proposal which became the Norris-LaGuardia Act:

> "[It] explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220.

The principal reed which Petitioners grasp on this point appears to be a footnote in this Court's opinion in *Charles*

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[18] Other cases which have rejected the notion that the Norris-LaGuardia Act deprives the state courts of their historic equity powers are: *Ford* v. *Boeger,* 236 F. Supp. 831 (E.D. Mo. 1964); *United Electrical, Radio & Marine Workers* v. *Westinghouse Elec. Corp.,* 65 F. Supp. 420 (E.D. Pa. 1946); *Shaw Elec. Co.* v. *International B'hood of Elec. Workers,* 418 Pa. 1, 208 A.2d 769 (1965); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n,* 382 Pa. 326, 115 A.2d 733 (1955), *cert. denied,* 350 U.S. 843 (1955); *General Building Contractors' Ass'n* v. *Local Union No. 542,* 370 Pa. 73, 87 A.2d 250 (1952); *Curtis* v. *Tozer,* 374 S.W. 2d 557, 590-92 (Mo. App. 1964); *C. D. Perry & Sons, Inc.* v. *Robilotto,* 39 Misc. 2d 147, 240 N.Y.S.2d 331 (Sup. Ct. 1963); *Southern Bus Lines* v. *Amalgamated Ass'n of Street Elec. Ry. & Motor Coach Employees,* 205 Miss. 354, 38 So.2d 765 (1949); *Markham & Callow* v. *International Woodworkers,* 170 Ore. 517, 567-68, 135 P.2d 727, 746 (1943).

Dowd Box Co. v. *Courtney*, 368 U.S. 502, 514 n. 8 (1962), to the effect that: "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court."

Obviously, the short answer to Petitioners' suggestion that this case is an appropriate one to resolve the question referred to in the footnote is that this case has nothing to do with that question. This case does not involve a state court applying federal labor law but a state court applying state law. In the footnote in the *Charles Dowd* case, this Court was simply alluding to the suggestion, mooted from time to time, that the Norris-LaGuardia restrictions on the federal injunctive power are part of the federal labor law and policy which Section 301 of the LMRA requires state courts to apply in Section 301 suits brought in the state courts. See *American Dredging Co.* v. *Local No. 25*, 338 F.2d 837 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965).[19]

Clearly, this question has no relationship to cases like the present one where a state court was requested to exercise its equity power in a suit brought to enforce state-created rights and governed by state law. Respondent based its suit in the Circuit Court exclusively on Florida law. The Circuit Court in granting the temporary injunction relied on the common and statutory law of Florida: the common law of the State against secondary boycotts, and against unjustifiable interference with contractual relations and with the right to carry on business; and the statutory law, in that Petitioners' conduct was an attempt

[19] Of course, suits under Section 301 are suits to enforce federally-created rights and are governed by a corpus of federal labor law. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957).

to coerce Respondent to violate its duty as a carrier under the Florida Transportation Act and to impose an embargo on the FEC in violation of the Florida restraint of trade laws. (See Pet. App. 50a, and the quotations at pp. 5-6 n. 7, *supra*)—Certainly, Petitioners' argument on this point is so lacking in substance as to furnish no basis for the granting of certiorari.[20]

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[20] As we have indicated, even if it is assumed that the Norris-LaGuardia Act would prevent a federal court from granting an injunction in the factual situation involved in this case, it is clear that a state court applying state law is not barred by that Act. Of course, Respondent, together with Coast Line and Seaboard, is arguing in No. 220 that the Norris-LaGuardia Act does not prevent a federal court from exercising injunctive powers in this general factual situation. However, it is obvious that this Court need not decide any of the issues presented in No. 220 in passing on the present Petition for Certiorari; accordingly, there would appear to be no basis for deferring action on the present petition in the light of the pendency of No. 220.

We must observe that Petitioners by their position in No. 220 and in this case apparently are denying that there is any organ of Government, federal or state, judicial or administrative, having jurisdiction to restrain their conduct, despite its devastating impact on the State of Florida—and indeed on the whole of the southeastern region of the United States—even if that conduct is unlawful under state or federal law or both. Comment on the relationship between this position and the principle of the rule of law in the settlement of controversies would appear superfluous.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

1. The Florida Transportation Act provides in pertinent part:

351.12 FREIGHT NOTICE

All common carriers engaged in the transportation and delivery of freight in this state, immediately upon receipt of any freight at the point to which it may be consigned, shall notify in writing the consignee of the same. Such common carriers shall make no charges for the storage of such freight until after the expiration of three days after such notice is given as hereinbefore provided. Such common carriers shall be liable for said freight.

351.14 DUTY OF RAILROAD COMPANIES WITH CROSSING LINES

All railroad companies in this state crossing or meeting each other at any point shall construct such switches, side-tracks and connections as will enable them to transport cars to and from each other's lines; and the expense of such construction shall, unless otherwise provided, be borne equally by such connecting lines of railroad.

351.15 SHIPPING OF FREIGHT

All railroad companies or other common carriers doing business in this state shall ship all freight received by them by such routes, and deliver the same to such connecting lines as the shippers may direct; and no railroad company or other common carrier shall refuse to receive any freight because it is billed by the shipper by any particular route; and provided, that no

railroad company, nor other common carrier, shall charge any higher rate for delivering freight to a connecting line than would be charged by said company for delivering freight to individuals at the place where such connecting road or common carrier receives such freight.

351.16 To receive cars from connecting lines

All railroad companies or other common carriers shall receive from connecting lines cars loaded with freight, or empty cars, and transport the same to their destination, or to such other connecting line as they may be consigned to, and return such cars to the connecting line from which they are received, and they shall also deliver to connecting lines cars loaded with freight, or empty cars, as they may be consigned; and no railroad company in this state shall charge or collect any higher rate of freight or wheelage than would be charged for transporting and delivering freights to individuals between the point of receipt and the point of delivery.

351.17 Recovery of damages

If any person shall be damaged by the refusal or failure of any railroad company to obey the provisions of §§ 351.14-351.16, such person shall, upon suit brought, recover from the railroad company so violating said sections damages in full of the amount of loss actually incurred, all costs, charges and reasonable attorney's fees.

351.19 Penalty for not complying with laws relating to transfer of freight to other roads

If any person, agent or employee of any railroad company, or other common carrier, shall violate or refuse

to obey the provisions of §§ 351.14-351.18, such officer, agent or employee of such railroad company or other common carrier shall be fined not less than two hundred and fifty dollars, nor more than one thousand dollars.

2. The Florida Restraint of Trade Law provides as follows:

542.01 DEFINITIONS; TRUST, COMMODITY

(1) A trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce, or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodity;

(c) To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or descrip-

tion by which they shall bind or have bound themselves not to sell, dispose of or transport any article, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Provided, however, that no agricultural or horticultural non-profit cooperative association organized and incorporated under the laws of the state nor the members, officers, agents or employees thereof or any of them, as such, shall be deemed to be a trust, a combination in restraint of trade, an illegal monopoly or any attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to be a trust, or be considered illegal or in restraint of trade.

(2) As used in this chapter, the word commodity shall include any article, product, merchandise, thing of value, service or output of a service trade.

542.02 FORFEITURE OF CHARTER OF DOMESTIC CORPORATIONS FOR VIOLATIONS

Any corporation holding a charter under the laws of the state which shall violate any of the provisions of this chapter shall forfeit its charter and franchise, and its corporate existence shall cease.

542.03 DISSOLUTION PROCEEDINGS INSTITUTED BY ATTORNEY GENERAL, ETC.

For a violation of any of the provisions of this chapter by any corporation mentioned herein, the attorney general or any state attorney upon his own motion, and without leave or order of any court or judge, shall institute suit or quo warranto proceedings for the forfeiture of its charter rights and franchises and the dissolution of its corporate existence.

542.04 FOREIGN CORPORATION VIOLATING CHAPTER DENIED RIGHT TO DO BUSINESS IN STATE

Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The attorney general shall enforce this provision by injunction, or other proper proceedings, in the name of the state.

542.05 COMBINATIONS PROHIBITED; PENALTY

Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry

out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(2) To increase or reduce the price of merchandise, produce or commodities;

(3) To prevent competition in the manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;

(4) To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state; or,

(5) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected; or any person who shall aid

or advise in the creation or carrying out of any such combination, or knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, as principal, manager, director, agent, servant, or employee, or in any other capacity, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary for not less than one nor more than ten years. Each day during a violation of this provision shall constitute a separate offense.

Provided, however, that no agricultural or horticultural non-profit cooperative association organized and incorporated under the laws of the state, nor the members, officers, agents or employees thereof, or any of them as such, shall be deemed to be a combination prohibited under the meaning of this section nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to have created a combination prohibited herein.

542.06 SUFFICIENCY OF INDICTMENT

In any indictment or information for an offense named in this chapter it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when, or where it was created.

542.07 RULE OF EVIDENCE

In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists, and that the defendant or defendants belonged to it or

acted for or in connection with it, without proving all members belonging to it, or providing or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. General reputation may be given in evidence in all prosecutions of alleged combinations under the provisions of this chapter.

542.08 CRIMINAL LIABILITY OF NONRESIDENT

Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons violating its provisions, whether within or without this state.

542.09 DAILY PENALTY FOR CONTINUED VIOLATIONS

Every person who shall in any manner violate any of the provisions of this chapter, shall, for each day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state in any county where the offense is committed. The attorney general and the state attorneys and county solicitors shall prosecute for and recover the same.

542.10 CONTRACT IN VIOLATION OF CHAPTER VOID

Any contract or agreement in violation of the provisions of this chapter shall be void and not enforceable either in law or equity.

542.11 OFFICERS AUTHORIZED TO SUBPOENA WITNESSES TO TESTIFY AS TO VIOLATIONS; TESTIMONY OF WITNESSES

Any court, officer, or tribunal having jurisdiction of the offense defined in this chapter, or the attorney general, or any state attorney or county solicitor or grand jury, may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of this chapter about which he may testify fully and without reservation.

542.12 CONTRACTS IN RESTRAINT OF TRADE INVALID; EXCEPTIONS

(1) Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided by subsection (2) and (3) hereof, is to that extent void.

(2) One who sells the good will of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the good will from him, and so long as such employer continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN,
a labor organization, *et al.*,

Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

SUPPLEMENTAL BRIEF OF RESPONDENT JACKSONVILLE TERMINAL COMPANY IN OPPOSITION

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This Supplemental Brief in Opposition is filed to advise the Court of certain events that have transpired in the proceedings going forward in this matter in the Florida State courts since our Brief in Opposition was filed, July 18, 1966.

As we advised the Court in our Brief in Opposition (p. 7, n. 9), July 29, 1966, was set as the date for a final hearing